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Not sure if you all have seen this.....

Rob

## EPA Seen Taking Stronger Role Voicing Concerns Over Pipeline Reviews

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EPA appears to be taking an increasingly strong role voicing concerns over oil and natural gas pipelines regulated by the Federal Energy Regulatory Commission (FERC), with one environmentalist citing "real failings" that the agency has highlighted in National Environmental Policy Act (NEPA) and Clean Water Act (CWA) reviews.

For example, the agency has flagged concerns with the controversial [Dakota Access crude oil pipeline](#). The Army Corps of Engineers recently halted approval for parts of the pipeline following protests from a tribe and others about inadequate consultation. EPA has also forwarded concerns to FERC about other projects, including a letter last month questioning the completeness of a review of a proposed pipeline project in the Northeast.

EPA does not directly have oversight for pipelines, which are generally governed by FERC with approval under the CWA by the Corps. which is the permitting authority under section 404 of the water law. However, EPA does submit comments under NEPA on environmental impacts of projects, and shares an oversight role with the Corps under section 404 -- and it has [power under CWA section 404](#) to veto permitted sites the Corps has approved.

"EPA has pointed out some real failings," the environmentalist says, pointing to [several recent EPA comment letters](#) to FERC.

For example, EPA Environmental Assessment and Innovation Division director John Pomponio in a [Sept. 12 letter](#) to FERC deputy secretary Nathaniel Davis, Sr., is flagging concerns about FERC's draft environmental impact statement (EIS) under NEPA for the PennEast LLC Pipeline Project. The project proposes to construct and operate about 118.8 miles of natural gas pipeline extending from Luzerne County, PA to Mercer County, NJ.

"EPA has significant concerns regarding the alternatives analysis, a number of important topics for which information is incomplete, and the direct, indirect and cumulative impacts of the proposed action on the environment and public health, including impacts to terrestrial resources, including interior forests, aquatic resources, and rare, threatened and endangered species," the letter says.

EPA says impact estimates in the draft EIS include direct removal or fragmentation of 633 acres of forest, with no quantitative analysis of "high valued interior forests" and an estimated 56 acres of temporary impacts to wetlands, 35 acres of permanent impacts, and 255 water crossings. Moreover, the project proposes a 1,056 foot dry crossing of the Susquehanna River, which would divert flow of the river during low flow conditions.

"EPA recommends that the potential on site and downstream effects of these flow perturbations be quantified," the letter says. FERC should also evaluate potential impacts related to mining subsidence, landslides and flash flooding, potential "blasting" impacts to water wells, springs and wetlands, and that FERC better consider the project's potential to induce movement of naturally occurring arsenic into groundwater, EPA says.

The letter also raises concerns on FERC's cumulative impact assessment, saying it narrowly identified past, present, and reasonably foreseeable actions and geographic and temporal scope in assessing impacts.

"EPA recommends that FERC describe the inter-related network of existing and proposed pipelines and associated impacts," the letter says, including a more comprehensive consideration of impacts from natural gas production, transmission and use. EPA has rated the letter "environmental objections, insufficient information," which means it identified significant environmental impacts that should be avoided in order to adequately protect the environment.

## **EPA's Concerns**

In a [separate letter](#) from Keith Hayden, EPA Region 6 special projects chief, to FERC Secretary Kimberly Bose, the agency says a final EIS for the Lake Charles Expansion Project to reconfigure Kinder Morgan's existing pipeline network to accommodate the Magnolia Liquefied Natural Gas and Lake Charles Expansion Project addressed some concerns EPA raised earlier in the NEPA process. However, the letter adds that, "EPA continues to have concerns regarding analysis of indirect effects and greenhouse gas emissions."

EPA says that the EIS did not "fully consider" the potential for increased natural gas production as a result of the project, and urges FERC to consider the Energy Department's draft study, "Addendum to Environmental Review Documents Concerning Exports of Natural gas from the United States."

Additionally, FERC should include estimates of the GHG emissions anticipated annually from the production, transport and combustion of the natural gas expected to be exported from the facility, the letter says.

EPA's Christopher Militscher, in [an Oct. 26, 2015, letter to Bose](#), also highlighted concerns with FERC's proposal to allow construction of natural gas transmission pipelines and associated facilities consisting of three separate pipeline projects -- including the Sabal Trail project of 515 miles of new pipeline and easements from central Alabama to Osceola County, FL.

The letter highlights a number of concerns with the project, including that FERC's compensatory mitigation plan under the CWA had not been finalized and included at the time the draft EIS was issued, and that the DEIS did not fully identify avoidance and minimization measures for the project's impacts to jurisdictional waters.

The Sabal Trail pipeline project is also the subject of Aug. 17 litigation filed by several environmental groups in the U.S. Court of Appeals for the 11th Circuit, in which the groups argue in *Gulf Restoration Network, et al., v. Army Corps of Engineers* similarly that the Corps failed to give adequate notice of how the companies would mitigate loss of wetlands ahead of issuing a final permit, consequently failing to provide an appropriate opportunity for public comment.

## **Pipeline Review**

EPA also raised concerns over the Corps' NEPA review of the Dakota Access crude oil pipeline, where it echoed environmentalists' longstanding claims that the Corps often narrowly reviews "segments" of a pipeline in isolation rather than considering the cumulative impacts of the overall project.

The Corps announced Sept. 9 that it would suspend approval for construction of two sections of DAPL that would be built on Corps-owned land under or near Lake Oahe in North Dakota. Members of the Standing Rock Sioux Tribe and others have argued, in litigation and public protests, that the administration failed to adequately consider the potential that the pipeline's construction along the Missouri River waterbodies threatens their drinking water supply.

That decision came soon after District Judge James Boasberg, of the U.S. District Court for the District of Columbia, denied tribes' request for a preliminary injunction against the construction of the entire pipeline -- not just the Lake Oahe reaches -- in their suit seeking to halt the project permanently.

The Corps' brief in the litigation at press time was due Oct. 11 and the Corps has until Nov. 10 to file its administrative record, with a status hearing scheduled the same day.

During an Oct. 5 press call, American Petroleum Institute's Robin Rorick, midstream group director, said "the process is in place" to take into account the tribal concerns, and that the group is advocating that the agencies follow the process. -- *Bridget DiCosmo* ([bdicosmo@iwpnews.com](mailto:bdicosmo@iwpnews.com))